

REMARKS/ARGUMENTS

The Examiner has sent an Advisory Action Before the Filing of an Appeal Brief (PTOL-303) dated 1/18/07. That Advisory Action states that the Reply filed 12/26/06 fails to place the subject application in condition for allowance and was filed after a final rejection. None of the several possible responses allowed by the Advisory Action in Paragraph 1 are possible in this case, since the Advisory Action and the preceding Amendment After Final were dated six months or more after the Final Action.

As the Applicant previously explained in his Amendment dated 12/26/06, and as his representative discussed with the Examiner in a phone call on 02/07/06, the June 27, 2006 Final Action was not properly a Final Action for the reasons previously given and repeated immediately below.

Objection to FINAL ACTION:

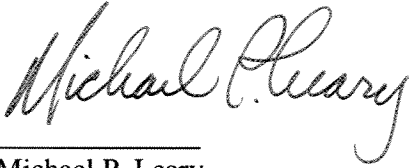
At Paragraph 13 of his June 27, 2006 Final Action the Examiner states that the Applicant's previous arguments regarding independent claim 12 are moot in view of "new grounds of rejection" presented therein. The Applicant notes that independent claim 12 was not amended in the preceding Amendment of June 5, 2006. Thus, the Applicant respectfully points out that the Examiner's statement at Para 16, that the Applicant's amendment necessitated the new grounds for rejection presented in the June 27, 2006 Final Action, is incorrect, at least as regards independent claim 12 and its dependent claims 13-18.

Moreover, MPEP §706.07(a) states that "second or any subsequent actions on the merits shall be made final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an IDS filed during the [response] period" (emphasis added) Therefore, since the new grounds for rejection of Claim 12 were not necessitated by any amendment made by the Applicant (or by any IDS), he respectfully requests that the Examiner withdraw the finality of the June 27, 2006

Appl. No. 10/678,659
Reply dated March 2, 2007
Responsive to Advisory Action dated January 18, 2007

Action and respond to the 12/26/06 Amendment with either a Notice of Allowance or an Action (Final or otherwise).

Respectfully submitted

A handwritten signature in cursive script that reads "Michael P. Leary". The signature is written in dark ink and is positioned above a horizontal line.

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March 2, 2007

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